



**Multifamily Division  
Black, Indigenous, and People of Color-  
owned Business Enterprise and  
Women-owned Business Enterprise  
Compliance Guide**

*June 2022*

MINNESOTA HOUSING – MULTIFAMILY DIVISION BLACK, INDIGENOUS, AND PEOPLE OF COLOR-OWNED BUSINESS ENTERPRISE AND WOMEN-OWNED BUSINESS ENTERPRISE COMPLIANCE GUIDE



*The Minnesota Housing Finance Agency does not discriminate on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, gender identity, or sexual orientation in the provision of services.*

*An equal opportunity employer.*

*This information will be made available in alternative format upon request.*

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## Chapter 1 – Introduction

### 1.01 Policy Summary

It is the policy of Minnesota Housing that Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises<sup>1</sup> have equal access to business opportunities resulting from Minnesota Housing financed developments. This policy addresses marketing and outreach requirements for contracting and purchasing as described by state and federal procurement laws and regulations.

### 1.02 Applicability

Projects with deferred financing through Minnesota Housing trigger Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise marketing and outreach requirements and performance goals described in this guide. Deferred financing includes the following state and federal programs: Economic Development and Housing Challenge (EDHC), Preservation Affordable Rental Investment Fund (PARIF), Publicly Owned Housing Program (POHP), Rental Rehabilitation Deferred Loan (RRDL), Housing Infrastructure Bonds (HIB), HOME Investment Partnerships (HOME), and National Housing Trust Fund (NHTF).

The owner/developer must take all necessary affirmative steps to help ensure that it and its Contractors use Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises when possible, in accordance with this guide, for all project related contract awards that exceed \$25,000.

### 1.03 Statutory and Regulatory Authorities

Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise marketing and outreach requirements are guided by state and federal regulations.<sup>2</sup>

Procurement Regulations:

- **Minnesota Statutes § 16C.16.** Minnesota state procurement standards for purchasing goods and services from targeted group businesses, including those businesses that are majority owned and operated by women or specific minorities.
- **2 CFR § 200.321.** Federal procurement standards for contracting with small and minority businesses, women business enterprises, and labor surplus area firms.

Specific Program Regulations:

- **HOME Investment Partnerships.** 24 CFR §92.350 directs participating jurisdictions, including Minnesota Housing, to establish and oversee a Black, Indigenous, and people of color-owned

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<sup>1</sup> Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises is also known as Minority-owned and Women-owned Business Enterprises (MBE/WBE)

<sup>2</sup> Minnesota Housing has adopted Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise, which is also known as MBE/WBE when in reference to certain state and federal programs as well as statutory language.

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Business Enterprise and Women-owned Business Enterprise outreach program within the jurisdiction to help ensure the inclusion of Black, Indigenous, and people of color and women, and entities owned by Black, Indigenous, and people of color and women, in all contracts entered into by the participating jurisdiction. 24 CFR §92.508(a)(7)(ii) requires documentation and record keeping of efforts taken to implement an outreach program, the amount of contracts, and documentation.

- **National Housing Trust Fund.** 24 CFR §93.407(a)(5)(viii) requires records demonstrating compliance with 2 CFR §200.321 regarding grantee’s activities related to MBE/WBE.

### 1.04 Responsibilities

#### Minnesota Housing

- Provide this guide and all appendices to the owner/developer at the launch meeting.
- Monitor the performance of the owner/developer with respect to Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise objectives and requirements.

#### Owner/Developer and Contractor/Subcontractors

- Provide this guide and all appendices to prospective Contractors before bidding.
- Comply with Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise objectives and requirements in their operations and in the operations of their Contractor and Subcontractors.
- Implement procedures designed to notify Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises about contracting opportunities generated by the assistance.
- For projects receiving HOME and/or NHTF financing from Minnesota Housing, document steps taken to comply with participation goals, the results of actions taken, and impediments using the Contracts and Procurement Report (Appendix C).
- Provide proof of certification<sup>3</sup> of all Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises.
- Complete the Contractor Compliance Activity Report (Appendix B) that details responsibilities for completion of each required form. Reporting to Minnesota Housing is required prior to closing for all projects receiving deferred financing from Minnesota Housing. For projects receiving HOME and/or NHTF financing from Minnesota Housing, this form is also required a second time, at the end of construction.

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<sup>3</sup> Each Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise must be certified by the Minnesota Department of Administration (<https://www.mmd.admin.state.mn.us/pdf/TGWebApp.pdf>).

## Chapter 2 – Requirements

### 2.01 Participation Goals

State and federal regulations direct that affirmative steps must be taken to help ensure that Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises are contracted when possible. When federal funds are included in a project, these steps must also include labor surplus area (LSA) firms<sup>4</sup> and small and disadvantaged business enterprises. Outreach to Black, Indigenous and people of color and women-owned businesses must be conducted and documented to the satisfaction of Minnesota Housing for all contracts in excess of \$25,000.

Minnesota Housing set individual participation goals for Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises. Women-owned Business Enterprise goals are statewide. Black, Indigenous, and people of color-owned Business Enterprise goals differ for the Twin Cities Seven-County Metropolitan Area and Greater Minnesota. Participation goals are applied to the whole project and pertain to the total amount of construction and related contracts.

Participation Goals <sup>5</sup>	Women-owned Business Enterprises	Black, Indigenous, and People of Color-owned Business Enterprises
Greater Minnesota	6%	4%
Twin Cities 7 County Metro		13%

### 2.02 Affirmatively Marketing to Black, Indigenous, People of Color-owned Business Enterprises and Women-owned Business Enterprises and Labor Surplus Area Firms

Developers/owners, Contractors, and Subcontractors should maintain evidence of efforts made to demonstrate proof of Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise outreach. Efforts to include Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises must allow for sufficient time to effectively participate in the bidding and/or application process. Good faith efforts to achieve success may be demonstrated by providing documentation detailing outreach plans and activities, including affirmative steps defined in federal regulations at 2 CFR §200.321:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

<sup>4</sup> A Labor Surplus Area (LSA) is defined by the U.S. Department of Labor as a civil jurisdiction with an unemployment rate at least 20% above the average unemployment rate for all states during the two previous calendar years. That designation can also be petitioned under exceptional circumstances, demonstrating the area experiences a significant increase in unemployment, which is neither temporary nor seasonal and which was not adequately reflected in the data for the two-year reference period. The U.S. Department of Labor keeps a list of current LSAs that is updated annually.

<sup>5</sup> Participation goals are based up the most recent “Survey of Business Owners” by the Minnesota Department of Employment and Economic Development (2012).

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2. Helping ensure that small and minority businesses, and women’s business enterprises, are solicited whenever they are potential sources;
3. Dividing total requirements, when they are economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women business enterprises;
4. Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority businesses, and women business enterprises;
5. Using the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the Contractor, if subcontracts are to be let, to take the affirmative steps 1-5.

A listing of current Minnesota certified Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise vendors can be found on the [Department of Administration website](#).

## Chapter 3 – Performance and Compliance

### 3.01 Compliance Summary

To demonstrate compliance with Minnesota Housing’s affirmative marketing requirements, owner/developers must identify jobs bid and indicate those bid by Black, Indigenous, and people of color-owned, women-owned, and, for federal funds only (HOME and/or NHTF), small or disadvantaged businesses or local service area using the Minnesota Housing Contractor Compliance Activity Report. The Contractor Compliance Activity Report is a data collection tool to be included in bidding documents. All Contractors and Subcontractors providing bids must complete this form. If not enough Contractors or Subcontractors (especially Black, Indigenous, and people of color-owned Business Enterprises and Women-owned Business Enterprises) have been solicited, Minnesota Housing reserves the right to require work be re-bid affirmatively. Minnesota Housing may request additional documentation, if necessary, to help ensure compliance with this obligation.

### 3.02 Compliance Timeline

#### Project Launch

- Minnesota Housing notifies the owner/developer of requirements and provides this guide and all appendices to the owner/developer.

#### Underwriting

- The owner/developer certifies that they will comply with laws prohibiting discrimination in employment and that they hire affirmatively.
- The owner/developer creates a bid package, and includes this guide and all appendices, and submits to Minnesota Housing for review and approval prior to bid request.
- The Contractor certifies that they comply with laws prohibiting discrimination in employment and that they hire affirmatively<sup>6</sup>.
- Prior to closing, the owner/developer and Contractor must submit the Contractor Compliance Activity Report and documentation to the extent that Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise bids were solicited and awarded contracts.
- Minnesota Housing reviews compliance with applicable goals and reserves the right to require work to be re-bid affirmatively.

#### At Closing/Start of Construction

- Owner/developer and Contractor continue to monitor bidding and solicitations.
- Owner/developer and Contractor report on new bids and contracts.

#### Upon Construction Completion

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<sup>6</sup> If the Contractor changes at any time during the project, the new Contractor must certify.



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- For projects receiving HOME and/or NHTF financing from Minnesota Housing, the owner/developer and Contractor must update the Contractor Compliance Activity Report with any new contracts and submit the report to Minnesota Housing.

Compliance Timeline	Federal Projects (HOME and/or NHTF)	Non-Federal Projects
At project launch	Minnesota Housing notifies owner/developer of requirements and provides this guide and all appendices to owner/developer	
During Underwriting	Owner/developer certifies that they will comply with laws prohibiting discrimination in employment and that they hire affirmatively.	N/A
	Owner/developer creates bid package, and includes guide and all appendices, and submits to Minnesota Housing for review and approval prior to bid request.	N/A
	Contractor certifies that they comply with laws prohibiting discrimination in employment and that they hire affirmatively.	N/A
	Prior to closing, the owner/developer and Contractor submit Contractor Compliance Activity Report and documentation to the extent that Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise bids were solicited and awarded contracts.	
	Minnesota Housing reviews compliance with applicable goals and reserves the right to require work to be re-bid affirmatively.	
At Closing/Start of Construction	Owner/developer and Contractor continue to monitor bidding and solicitations.	N/A
Upon Construction Completion	Owner/developer and Contractor must update the Contractor Compliance Activity Report with any new contracts and submit to Minnesota Housing.	N/A

## Chapter 4 – Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of Title VI of the Civil Rights Act of 1968; the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988; and the Minnesota Human Rights Act. Housing providers and other entities involved in real-estate related transactions are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements. Entities involved in real-estate related transactions must comply with all non-discrimination requirements related to the provision of credit, as well as access to services.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful, because of protected class status, to:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in the making or purchasing of loans for purchasing, constructing or improving a dwelling, or in the terms and conditions of real-estate related transactions;
- Discriminate in brokering or appraising of residential property;
- Discriminate in terms, conditions, or privileges of the rental of a dwelling unit or services or facilities;
- Discriminate in the extension of personal or commercial credit or in the requirements for obtaining credit;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print, or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to

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make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

## **Chapter 5 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **5.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.02 Misuse of Funds**

A loan or grant agreement is a legal contract between Minnesota Housing and the borrower or grantee. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods, or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 5.05.

### **5.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper, or illegal act results from it.

An individual conflict of interest is any situation in which one’s judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

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- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party's objectivity in carrying out the award is or might be otherwise impaired due to competing duties or loyalties
- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party's responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party's participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 5.05.

A contracting party should review its contract agreement and request for proposals (RFP) material, if applicable, for further requirements.

### **5.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Refer to Minnesota Housing's website for a list of [suspended individuals and organizations](#).

### **5.05 Disclosure and Reporting**

Minnesota Housing promotes a "speak-up, see something, say something" culture whereby internal staff, external business partners (e.g., grantees, borrowers) and the general public are encouraged to report instances of fraud, misuse of funds, conflicts of interest, or other concerns without fear of retaliation. You may report wrongdoing or other concerns by contacting:

- Minnesota Housing's chief risk officer
- Any member of Minnesota Housing's [Servant Leadership Team](#)
- [EthicsPoint](#), the Minnesota Housing hotline reporting service vendor

## Certification and Acknowledgement

**Instructions:** The project’s Contractor or architect must return this completed and signed certification to Minnesota Housing via the Multifamily Customer Portal prior to releasing the project bid package. The project bid package must be approved by Minnesota Housing before it is released. A copy of the completed and signed certification must be included in the contract with the project developer as well.

A Subcontractor bidding on the project must return this completed and signed certification and acknowledgement with the bid application.

\_\_\_\_\_ as the \_\_\_\_\_ of  
(name) (title)

\_\_\_\_\_, here by acknowledge that I  
(company)

have been supplied with a copy of and have read Minnesota Housing’s Multifamily Division Black, Indigenous, and people of color-owned Business Enterprise and Women-owned Business Enterprise Compliance Guide, including all appendices, and fully understand and acknowledge, on behalf of \_\_\_\_\_ the obligation to strictly comply

(company)  
with the requirements set forth therein.

I certify that the information provided in this Certification is true, correct, and accurate.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## Appendix A – Terms

Term	Definition
Contractor	Any entity entering into a contract with the owner/developer to perform work in connection with a project receiving Minnesota Housing deferred multifamily financing.
Black, Indigenous, and people of color	People who are of the following racial or ethnic groups: Black/African American, American Indian or Alaska Native, Asian, Native Hawaiian or Other Pacific Islander, Hispanic or Latino.
Black, Indigenous, and people of color-owned Business Enterprise	A Black, Indigenous, and people of color-owned Business Enterprise is a business that is both owned and controlled by Black, Indigenous, or people of color. This means that there must not be less than 51% Black, Indigenous, or people of color ownership of the business, and the Black, Indigenous, or people of color ownership must control the management and daily operations of the business.
Subcontractor	Any entity that has a contract with a Contractor or other Subcontractor to undertake a portion of the Contractor or Subcontractor’s obligation to perform work in connection with a project receiving Minnesota Housing deferred multifamily financing.
Women-owned Business Enterprise	A Women-owned Business Enterprise is a business that is both owned and controlled by women. This means that there must not be less than 51% women ownership of the business, and the women ownership must control the management and daily operations of the business.

## **Appendix B – Contractor Compliance Activity Report**

**SAMPLE REPORT SHOWN ON FOLLOWING PAGE** – The [Contractor Compliance Activity Report](#) is available electronically on [Minnesota Housing’s website](#) and in the Multifamily Customer Portal.



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Contractor Compliance Activity Report

2021 06 01 Ver 1

Development Number:	
Development Name:	
Development Address:	
Development County Area:	
Total Construction Contract Amount:	

**\*\* COMPLIANCE ERRORS \*\***

The project is out of compliance with the goal(s) listed below. For any goal that remains out of compliance, submit documentation on how you attempted to reach that goal. **CLICK ON AN ERROR MSG** to see the details of that goal in the spreadsheet below.

The information is required to be provided for all contractors (i.e. generals and sub-contractors) who bid on the project.

Complete For All Contractors						Black, Indigenous, and People of Color-owned Business Enterprise/ Women-owned Business Enterprise Information		
Contractor Name & Address	Type of Business / Trade	General or Sub (G/S)	\$ Amt. Of Bid	Contract Awarded (Yes/ No)	Date of Contract If Awarded	Women-owned Business Enterprise (Yes/No)	Black, Indigenous, and People of Color-owned Business Enterprise (Yes/No)	Black, Indigenous, and People of Color-owned Business Enterprise Racial/Ethnic Code
Total(s) Where Applicable			Total Bid Amt:	\$0.00				
<b>COMPLIANCE TOTALS:</b>			Total Awarded Bid Amt:	\$0.00		Women-owned Business Enterprise Contract Award Amount: \$0.00		
						Women-owned Business Enterprise Percentage: 0.00%		
						Black, Indigenous, and People of Color-owned Business Enterprise Contract Award Amount: \$0.00		
						Black, Indigenous, and People of Color-owned Business Enterprise Percentage: 0.00%		

(Click on CONTRACTOR NAME / ADDRESS to change info)

ADD CONTRACTOR

ADD TRADE - MHFA ONLY

## **Appendix C – Contracts and Procurement Report**

The [Contracts and Procurement Report form](#) can be located on [Minnesota Housing’s website](#) and in the Multifamily Customer Portal.